Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Year 2000 Biennial Regulatory Review -	)	
Amendment of Part 22 of the Commission's	)	WT Docket No. 01-108
Rules to Modify or Eliminate Outdated Rules	)	
Affecting the Cellular RadioTelephone Service	)	
and Other Commercial Mobile Radio Services	)	

To: The Commission

Reply Comments of N.E. Colorado Cellular, Inc.

N.E. Colorado Cellular, Inc. ("NECC") by its attorneys, and pursuant to the Commission's Notice of Proposed Rulemaking[1/] hereby submits its reply comments in the above-captioned proceeding. NECC respectfully urges the Commission to maintain the analog cellular availability requirement as the comments filed in this proceeding demonstrate that removal would have a detrimental effect on public safety and roaming.

I. Introduction

NECC is the A Band cellular carrier providing service to the Colorado 2, Colorado 5, and Colorado 8 RSAs. NECC acquired its Colorado 2 license in the late 1980's and aggressively built out its system, expanding into the other RSAs pursuant to the FCC's Phase I and Phase II program for unserved areas. Many of NECC's subscribers live in remote rural areas where it is

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[1/] Year 2000 Biennial Regulatory Review, Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular RadioTelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Notice of Proposed Rulemaking* (rel. May 17, 2001).

very costly to serve. NECC has built its business by providing customers with high quality wireless service.

Unlike most rural cellular carriers that construct minimal coverage to achieve FCC compliance at the expense of serving customers, NECC has achieved hand held coverage throughout its service area. NECC has deployed roughly six times the number of cell sites constructed by its nearest competitor, while achieving better than P.01 service throughout its system. NECC's analog network supports many of the features offered on today's digital networks, such as caller identification and message notification.

To deploy this level of service using digital equipment would be cost-prohibitive. A digital network requires more cell sites to achieve similar coverage, and providing the level of service that NECC now provides would be impossible. Put simply, rural areas do not today support digital service *at the levels required to give customers an adequate level of service*. The population density and demographics do not currently permit a carrier to fill in dead areas and provide ubiquitous coverage using expensive digital equipment.

NECC's analog network provides its subscribers with clear voice channels and nearly ubiquitous coverage. Given the choice between a high level of analog service and spotty digital service, the majority of customers in NECC's service area have chosen NECC. Unfortunately, complaints concerning the poor level of service offered to NECC's customers when they roam into other markets is common.

It has been NECC's experience that a substantial number of its customers have experienced unacceptable degradation of analog service when they roam in major metropolitan areas. Moreover, they have experienced poor analog service in rural areas, which have begun to

deploy digital in selected areas, while large areas remain unserved. These unserved areas are shown on the FCC's records to be covered, and therefore NECC's customers have no near term hope of having a proper system constructed to serve their roaming needs.

As detailed below, there are many reasons to maintain the analog requirement and implement rules which will ensure a smooth transition to digital in the upcoming years.

II. Analog Service Supports Vital Health and Safety Applications

Onstar's comment that there is no nationwide cellular network without analog rings true.[1/] No carrier can properly claim that its network is nationwide unless its equipment and roaming agreements provide access to the nation's analog cellular system. Large carriers remain focused on building out metropolitan, suburban and highway portions of their systems. With few exceptions, they have not driven competitive digital services into rural areas, other than along interstate highways. As a result, digital subscribers traveling in these areas must have equipment capable of roaming on analog networks.

[2/] Comments of Onstar Corporation at pp. 8-9.

For the more than one million Onstar subscribers, this is a health and safety issue of the highest order. Soon that number will quadruple.[1/] Response times in remote areas is much greater than in metropolitan areas. The presence of an automatic location device and the analog communications link mean the difference between life and death for an increasing number of people each day. The Commission must not create a regulatory loophole which causes the premature dismantling of analog capacity which underpins numerous communications devices needed to carry out health and safety functions. No commenter presented any evidence to demonstrate feasible alternatives to the analog network which will be available in the near future.

NECC is in the process of entering into an agreement with Onstar to provide service to Onstar subscribers in NECC's unserved areas. NECC will also be the back up provider in the Colorado 2 RSA because NECC serves many remote areas not reached by its B-side competitor, which is Onstar's main service provider.

Virtually all county ambulance services use NECC's service because of its superior coverage. Ambulances that transport severely injured people to trauma centers outside NECC's service area have encountered serious difficulties in completing a call due to blockage or poor coverage. As a result, NECC has been forced to outfit some ambulances with dual mode phones for use outside of NECC's territory in order to increase the likelihood that a critical call will be completed.

And telematics applications such as Onstar are not alone. Other health and safety applications such as alarm monitoring systems, as well as TTY devices, continue to depend upon

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[3/] Comments of Onstar Corpration at p.3.

analog capacity. Ford Motor Company is developing a competing telematics system which NECC believes to be dual mode, with analog acting as the backup for the communications and emergency notification services.

In sum, this one issue alone precludes elimination of the analog requirement at this time. The Commission must devise a proper transition period to ensure that people may continue to depend on these services to work as they were intended in times of need.

III. A Transition Plan, Combined With Meaningful Standards for Acceptable Levels of Service, Must Be Implemented.

Aside from the obvious health and safety issues implicated by eliminating the analog capacity requirement, the only practical means of ensuring that analog customers are not stranded by large carriers is to implement a reasonable transition plan. The current situation illustrates the need for a clear migration path to be imposed.

NECC begins from the proposition that many cellular carriers have been in blatant violation of Section 22.901 for years. If the FCC's Field Operations Bureau went into the field to test analog service in major cities, it would discover that it is difficult, if not impossible, to complete or receive analog calls during the busy hour. NECC's subscribers have for years complained about their inability to roam on analog networks in major cities. Attempting a call more than ten times to get an open channel is a frequent experience, and it is simply unacceptable from a service perspective.[1/]

The preamble to Section 22.901 of the rules clearly requires cellular carriers to "provide service upon request to subscribers in good standing, including roamers." For a roamer, the "request" is the act of pushing the "Send" button. In NECC's view, any time a subscriber pushes the Send button, they should have a reasonable expectation of obtaining a voice channel and

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[4/] The common large carrier refrain is that subscribers have choice, they can simply switch to a system which provides superior capacity. In NECC's case, its customers refuse to switch to an inferior network in their home market, where they use their phones most and where NECC provides superior service.

completing a call. In NECC's view, carriers who design substandard systems or migrate channels to digital prematurely in an effort to convince subscribers to switch to digital are in violation of that rule.

Section 22.901(a) requires carriers to inform prospective subscribers of the area in which reliable service can be expected. NECC believes that analog subscribers should be advised of areas where analog capacity is such that reliable service is diminished. This rule serves a very valid purpose: to permit subscribers to make informed choices about the network and their equipment. To NECC's knowledge, no large carrier is informing the public of analog capacity shortages, yet subscribers inform NECC quite often of their inability to complete calls in many metropolitan areas.

Section 22.901(b) requires carriers to report to the FCC instances of a carrier refusing service to a subscriber due to lack of capacity. There is no doubt but that the inability to complete a call due to the "fast busy" is likely caused by lack of capacity - and amounts to nothing less than a refusal to provide service. With minimal investigation, the FCC is capable of learning how much analog capacity is designed into any cellular carrier's system - and whether that capacity is capable of serving the number of analog subscribers seeking service on that system.

NECC understands that the FCC has no desire to launch a massive enforcement effort, and perhaps none is necessary. Instead, the Commission must balance the analog demand, which is decreasing over time, with carriers' capacity requirements. CTIA keeps records of the number of subscribers, both analog and digital, and it is not difficult to forecast the demise of analog. No evidence has been presented suggesting that analog will be obsolete for many years. Thus, one

answer is to provide carriers with additional spectrum in coming years, so as to ease their need to reduce or eliminate analog capacity. In the meantime, the requirement to provide minimal analog spectrum to meet customer needs should logically remain in the rules, and it should be quantified so as to provide customers with predictable levels of service as analog demand declines.

NECC suggests a minimum P.05 grade of service, which is far below what is currently acceptable in most commercial wireless contexts. Based on complaints NECC receives, carriers are not providing NECC's roaming customers with anywhere near that level of service at this time. A verifiable standard will ensure that analog subscribers have a reasonable chance of completing calls, and will permit carriers to ramp down analog capacity as subscribership and customer demand for such services declines.

In the absence of a meaningful standard, there is no means for the Commission to assess compliance, and customers' only choice is an informal complaint or a class action lawsuit, neither of which is likely to be pursued by inconvenienced subscribers. At its core, a carrier's refusal to provide adequate capacity to a paying customer is equivalent to stealing value from that customer. Large carriers do not disclose to either their subscribers or to potential roamers that analog service is degraded in major cities. A subscriber pays on the expectation that calls will be completed.

A meaningful standard such as P.05 will not "over regulate" the industry. Instead, it will provide a way for carriers to migrate subscribers to digital and wind down analog networks over the next decade without degrading service to the many people who depend on it. This is the essence of regulating in the public interest.

Not surprisingly, large cellular carriers seeking to abandon analog as soon as possible

support elimination of the rule. For them, spectrum is critical to driving digital device sales and up charging customers for new features which thus far have shown lackluster demand and, in the case of mobile internet, abysmal performance. NECC understands their need to grow their business, and the Commission must find a means for them to do so without prematurely stranding millions of subscribers who depend on phones for basic telephone service.

The simplest way to reconcile these competing interests is to raise the spectrum cap and make more spectrum available at the earliest possible date. In exchange for accessing additional spectrum, carriers should be willing to continue to provide reasonable access to analog networks throughout the phase out of analog technology.

III. Conclusion

Health and safety concerns require the FCC to ensure that sufficient analog capacity is maintained. In addition, a reasonable transition period must be implemented to ensure that the remaining analog customers have sufficient capacity to use basic telephone services.

For all the foregoing reasons, NECC urges the Commission to maintain the cellular analog availability requirement.

Respectfully submitted,

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